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CENTRAL FAX CENTER**OCT 31 2007****FAX TRANSMISSION TO USPTO**TO: Commissioner for Patents
Attn: Examiner Christopher Koharski
Patent Examining Corps
Facsimile Center
Alexandria, VA 22313-1450FROM: William J. Wood
OUR REF.: G&C 130.39-US-01
TELEPHONE: (310) 642-4144Total pages, including cover letter: 17PTO FAX NUMBER: 571-273-8300

If you do NOT receive all of the pages, please telephone us at (310) 641-8797, or fax us at (310) 641-8798.

Title of Document Transmitted:	TRANSMITTAL DOCUMENTS (2), INFORMATION DISCLOSURE STATEMENT, FORM PTO-1449 AND REFERENCE WITH TRANSLATION
Applicant:	Susan McConnell et al.
Serial No.:	10/033,993
Filed:	December 28, 2001
Group Art Unit:	3763
Title:	VARIABLE LENGTH FLEXIBLE CONDUIT FEEDER
Our Ref. No.:	G&C 130.39-US-01

Please charge all fees to Deposit Account No. 50-0494 of Gates & Cooper LLP.

By: Name: William J. Wood
Reg. No.: 42,236

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.



Signature

31 OCT 2007

Date

GHG/kmk

G&C 130.39-US-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Susan McConnell et al. Examiner: Christopher Koharski
Serial No.: 10/033,993 Group Art Unit: 3763
Filed: December 28, 2001 Docket: G&C 130.39-US-01
Title: VARIABLE LENGTH FLEXIBLE CONDUIT FEEDER

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office on October 31, 2007.

By: 

Name: Kathleen Krochko

INFORMATION DISCLOSURE STATEMENT(37 C.F.R. §1.97(c))

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

With regard to the above-identified application, an item of information listed on the enclosed Form 1449 is brought to the attention of the Examiner.

Pursuant to 37 C.F.R. §1.97(c), please charge the amount of \$180.00 to Deposit Account No. 50-0494 of Gates & Cooper LLP for having the items of information listed considered after the mailing date of a first Office Action on-the-merits, but before the mailing date of either a final action under 37 C.F.R. § 1.113, or a Notice of Allowance under 37 C.F.R. § 1.311.

In accordance with 37 C.F.R. §1.98(a)(2), a copy of foreign patent document DE 101 06 074 A1 as listed on the enclosed Form 1449 is provided. In addition, a translation of the paragraphs [0001]-[0031] of the specification of DE 101 06 074 A1 is provided.

As discussed in detail below, Applicants' attorney does not believe that DE 101 06 074 A1 is "prior art" within the meaning of 35 U.S.C. §§ 102 and 103. In this context, Applicants reserve the right, pursuant to 37 C.F.R. § 1.131 or otherwise, to establish that the reference(s) are not "prior art". However, in an order to confirm with the Patent Office that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. §§ 102 and 103, this reference and the associated translation are

OCT 31 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Susan McConnell et al.	Examiner:	Christopher Koharski
Serial No.:	10/033,993	Group Art Unit:	3763
Filed:	December 28, 2001	Docket:	G&C 130.39-US-01
Title:	VARIABLE LENGTH FLEXIBLE CONDUIT FEEDER		

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By: 
Name: Kathleen Krochko

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

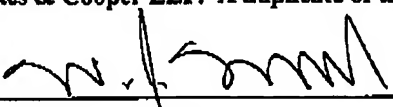
We are transmitting herewith the attached:

- ☒ Transmittal sheet, in duplicate, containing a Certificate of Mailing or Transmission under 37 CFR 1.8.
- ☒ Information Disclosure Statement and Form PTO-1449.
- ☒ Cited Reference(s).
- ☒ Charge the fee in the amount of \$180.00 for the Information Disclosure Statement to the Deposit Account.

Please consider this a **PETITION FOR EXTENSION OF TIME** for a sufficient number of months to enter these papers, if appropriate.

Please charge all fees to Deposit Account No. 50-0494 of Gates & Cooper LLP. A duplicate of this paper is enclosed.

Customer Number 22462
GATES & COOPER LLP
Howard Hughes Center
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G&C 130.39-US-01

submitted along with the following analysis of why Applicants' attorney believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. §§ 102 and 103.

DE 101 06 074 A1 is a German language Patent that was filed only in Germany. The information on the cover of this patent and a search of the PCT and EPO electronic databases shows that DE 101 06 074 was not filed in the PCT or the EPO. To Applicants' attorney's knowledge, the enclosed translation is the only English language translation of this document that exists.

The filing date for the instant U.S. patent application is **December 28, 2001** (and embodiments of Applicants' invention were conceived and reduced to practice well before this filing). In comparison, DE 101 06 074 A1 lists a filing/priority date of November 28, 2000 (i.e. more than 1 year before the filing date of the instant application). However, DE 101 06 074 A1 was filed only in the German Patent Office (not the PCT or EP) and was not published by the German Patent Office until **June 6, 2002** (i.e. after the December 28, 2001 filing date of the instant application). In view of this specific fact pattern, Applicants' attorney believes that DE 101 06 074 A1 does not constitute "prior art" within the meaning of 35 U.S.C. §§ 102 and 103. An analysis of 35 U.S.C. § 102 showing why DE 101 06 074 A1 does not constitute prior art in accordance with the provisions of this statute is provided below.

Applicants' attorney believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. § 102 (a) because DE 101 06 074 A1 subject matter was not known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent. Instead, DE 101 06 074 A1 subject matter was apparently known or used by others in only another country (e.g. Germany). In addition, DE 101 06 074 A1 subject matter was not patented or described in this or a foreign country before the December 28, 2001 filing date of the instant application. Instead it was patented or described (in this case published in German by the German Patent Office) in a foreign country on June 6, 2002.

Applicants' attorney believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. § 102 (b) because DE 101 06 074 A1 subject matter was not patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States. Instead it was patented or described in a foreign country on June 6, 2002 (i.e. after the December 28, 2001 filing date of the instant application).

35 U.S.C. § 102 (c) and 35 U.S.C. § 102 (d) do not apply to this situation with DE 101 06 074 A1.

Applicants' attorney believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. § 102 (e) because DE 101 06 074 A1 subject matter was not described in an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent. Instead, this application for a patent filed in Germany. Applicants' attorney further believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. § 102 (e) because DE 101 06 074 A1 is not a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent. Instead it is patent granted on an application for patent by another filed in Germany. In addition, DE 101 06 074 A1 is not an international application filed under the PCT treaty defined in section 351(a). DE 101 06 074 A1 is a German Patent Office patent application/publication.

35 U.S.C. § 102 (f) does not apply to this situation with DE 101 06 074 A1.

Applicants' attorney believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. § 102 (g) because: (1) there has been no interference under section 135; and (2) before such person's invention thereof, the invention was not made in this country by another inventor who had not abandoned, suppressed, or concealed it. Instead any invention in DE 101 06 074 A1 was apparently made in Germany.

Applicants' attorney believes that DE 101 06 074 A1 is not "prior art" within the meaning of 35 U.S.C. § 103 because, as discussed in the above-noted analysis, DE 101 06 074 A1 was not disclosed or described as set forth in 35 U.S.C. § 102.

While Applicants' attorney does not believe that DE 101 06 074 A1 is "prior art" within the meaning of 35 U.S.C. §§ 102 and 103 for the reasons noted above, out of an abundance of caution, DE 101 06 074 A1 and the associated translation are being provided to the Patent Office. Pursuant to the provisions of M.P.E.P. 609, it is requested that the Examiner return a copy of the attached Form 1449, marked as being considered and initialed by the Examiner, to the undersigned with the next official communication.

Please direct any response or inquiry to the below-signed attorney at (310) 641-8797.

Respectfully submitted,

GATES & COOPER LLP
Attorneys for Applicant(s)

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Date: October 31, 2007

By: 

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